Office - Supreme Court, U.S.
FILED
DEC 6 1983
ALEXANDER L. STEVAS,
CLERK

No. 83-822

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

GLENWOOD WILLIAMS,
Petitioner,

v.

WASHINGTON METROPOLITAN AREA
TRANSIT AUTHORITY,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

---

BRIEF FOR RESPONDENT IN OPPOSITION

E. BARRETT PRETTYMAN, JR.*
VINCENT H. COHEN
ROBERT B. CAVE
PAUL J. LARKIN, JR.
HOGAN & HARTSON
(a partnership including
professional corporations)
815 Connecticut Avenue, N.W.
Washington, D.C. 20006
(202) 331-4685
Counsel for Petitioner

* Counsel of Record

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

QUESTIONS PRESENTED

1. Whether an employee may bring a third-party suit under Section 33(b) of the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. § 933(b)) past the six-month time period specified by that Section, simply because that employee filed a different suit against a different third party within that six-month time period.

2. Whether Congress intended to permit an employee to bring suit past the Section 933(b) six-month period because of an alleged conflict of interest, despite the absence of any language in the statute so providing, where the only evidence of such a conflict is the fact that the employer and a third-party tortfeasor have a common insurance carrier.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	(i)
OPINIONS BELOW	1
JURISDICTION	2
STATEMENT	2
ARGUMENT	4
CONCLUSION	8

TABLE OF AUTHORITIES

Cases:

Bandy v. *Bank Line Ltd.*, 518 F. Supp. 1229 (E.D. Va. 1981)	7
Bloomer v. *Liberty Mutual Ins. Co.*, 445 U.S. 74 (1980)	5
Czaplicki v. *The Hoegh Silvercloud*, 351 U.S. 525 (1956)	3, 7, 8
Del Re v. *Prudential Lines, Inc.*, 669 F.2d 93 (2d Cir. 1982)	5
Edwards v. *Bechtel Associates Professional Corp.*, 466 A.2d 436 (D.C. App.), *cert. denied*, No. 83-560 (Nov. 28, 1983)	4, 7
Phillipi v. *Bechtel Associates Professional Corp.*, 702 F.2d 1206 (D.C. Cir. 1983) (*mem.*), *cert. denied*, No. 82-2084 (Oct. 3, 1983)	7
Rodriguez v. *Compass Shipping Co.*, 451 U.S. 596 (1981)	*passim*
Susino v. *Hellenic Lines Ltd.*, 551 F. Supp. 1080 (E.D.N.Y. 1982)	7
Westbrook v. *Hutchinson Crane Excavating Co., Inc.*, No. 82-1151 (D.C. App. June 30, 1983) (*mem.*), *cert. denied*, No. 83-540 (Nov. 28, 1983)	4, 7

TABLE OF AUTHORITIES—Continued

Statutes: Page

Longshoremen's and Harbor Workers' Compensation Act (LHWCA), 33 U.S.C. § 901 2
§ 904 ..... 3, 4, 8
§ 905 ..... 3, 4, 8
§ 933(b) ..... *passim*

D.C. Code § 36-501 2

Congressional Material:

S. Rep. No. 428, 86th Cong., 1st Sess. 2 (1959) 5
H.R. Rep. No. 229, 86th Cong., 1st Sess. 4 (1959) .. 5

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

No. 83-822

GLENWOOD WILLIAMS,
Petitioner,

v.

WASHINGTON METROPOLITAN AREA
TRANSIT AUTHORITY,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

---

BRIEF FOR RESPONDENT IN OPPOSITION

OPINIONS BELOW

The decision of the United States District Court for the District of Columbia granting the Washington Metropolitan Area Transit Authority's motion for summary judgment (Pet. App. A, 1a-2a) is not officially reported. The decision of the United States Court of Appeals for the District of Columbia Circuit, from which certiorari is sought (Pet. App. B, 3a-30a), is reported at 717 F.2d 574 (1983).

JURISDICTION

The decision of the Court of Appeals was rendered on August 19, 1983 (Pet. App. 7a). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATEMENT

Petitioner is a construction worker employed by Ball-Healy-Granite, a contractor engaged by the Washington Metropolitan Area Transit Authority ("WMATA") for the construction of the Metro subway system. Alleging that he had suffered injuries arising out of his employment, Petitioner filed suit in the Superior Court of the District of Columbia against Bechtel Associates Professional Corp., D.C., and Bechtel Civil and Minerals, Inc. ("Bechtel"), WMATA's agent, seeking damages from Bechtel for its alleged failure to provide him with a safe workplace (Pet. App. 37a-41a). At the same time, Petitioner filed a claim for workers' compensation benefits under the Longshoremen's and Harbor Workers' Compensation Act ("LHWCA"), 33 U.S.C. § 901 *et seq.*[1] On August 28, 1981, Petitioner received a lump sum compensation award of $98,000, as well as an award for future, related medical expenses and attorneys fees (*id.* 33a-36a).

More than six months later, on April 9, 1982, Petitioner moved to amend his complaint in Superior Court to add WMATA as an additional third-party defendant (*id.* at 42a-43a), and also filed an original suit against WMATA in United States District Court for the District of Columbia (*id.* at 57a-61a). WMATA thereafter moved in federal court for summary judgment, chiefly on the grounds that (1) Petitioner's claim was barred as untimely under the six-month time period for bringing a third-party suit prescribed by LHWCA Section 933(b),

[1] While the LHWCA is no longer directly applicable to the District of Columbia, it was applicable to the District of Columbia under D.C. Code §§ 36-501 *et seq.* at all times relevant here (*see* Pet. App. 16a & n.12).

and (2) WMATA was immune from suit under LHWCA Sections 904 and 905(a). The District Court granted WMATA's motion, ruling that WMATA was immune from suit under Sections 904 and 905(a) for the reasons given in two earlier District of Columbia District Court decisions on this question (Pet. App. 1a).[2] The District Court therefore did not reach the Section 933(b) issue.

The Court of Appeals affirmed. The court first concluded that WMATA was not immune from suit under Section 904 and 905(a) (*see* Pet. App. 16a-23a).[3] Nonetheless, the Court of Appeals affirmed the District Court's judgment on the ground that Petitioner's suit was barred by Section 933(b) (*see id.* at 26a-30a). Relying upon *Rodriguez* v. *Compass Shipping Co.*, 451 U.S. 596 (1981), the court ruled that Congress had overruled this Court's decision in *Czaplicki* v. *The Hoegh Silvercloud*, 351 U.S. 525 (1956), in the 1959 amendments to LHWCA Section 933.[4] The Court of Appeals acknowledged (Pet. App. 28a) that *Rodriguez* had left open the question whether the 1959 amendments overruled the specific conflict-of-interest exception adopted in *Czaplicki*, but concluded that the language, structure, legislative history, and underying policies of those amendments, as discussed in *Rodriguez*, all demanded the conclusion that the *Czaplicki* exception had not survived the 1959 LHWCA amendments (*id.* 27a-29a).

---

[2] The two earlier decisions cited in the District Court's decision below are reproduced in the Appendix to the Petition in *WMATA* v. *Johnson*, No. 83-747, *petition for cert. pending* (filed Nov. 4, 1983), at 1a-4a, 6a-12a.

[3] WMATA has sought review of this portion of the ruling below in its Petition in No. 83-747.

[4] In *Czaplicki*, the Court permitted an injured longshoreman to bring a third-party suit after accepting a compensation award, despite the apparent bar created by Section 933, where the stevedore had failed to bring suit because of a conflict of interest arising from a common insurance carrier for both the stevedore and the third-party defendant.

ARGUMENT

Further review of the decision below is unwarranted. That decision is fully consistent with the language and legislative history of LHWCA Section 933(b), as well as with this Court's decision in *Rodriguez* v. *Compass Shipping Co., supra.* Moreover, the ruling below is also fully consistent with the only other appellate court decisions on the issues presented in the Petition. *Edwards* v. *Bechtel Associates Professional Corp.*, 466 A.2d 436 (D.C. App.), *cert. denied*, No. 83-560 (Nov. 28, 1983); *Westbrook v. Hutchinson Crane Excavating Co., Inc.*, No. 82-1151 (D.C. App. June 30, 1983), *cert. denied*, No. 83-540 (Nov. 28, 1983). Finally, the judgment below is correct for a different reason than the one upon which the Court of Appeals relied: namely, WMATA is entitled to the immunity afforded the sole compensation provider by LHWCA Sections 904 and 905(a).

1. Petitioner's principal contention is that by filing suit against Bechtel, WMATA's agent, within the six-month period fixed by Section 933(b), he thereby tolled the running of that time period for any other third-party suits he might thereafter care to bring (Pet. 11-14). That contention is flawed in several respects.

To begin with, it is inconsistent with the plain language of Section 933(b). That Section provides that acceptance of a compensation award under an order constitutes an assignment of the employee's tort claim "against *such third person* unless" the employee "shall commence an action *against such third person* within six months after such award" (Pet. 4; emphasis added). Congress plainly intended to require an employee to bring his third-party claim against each alleged third-party defendant within the Section 933(b) six-month period to avoid an assignment of his claim with respect to each third-party defendant. Nothing in the language of Section 933(b) suggests that an employee can toll the run-

ning of that six-month period against the world simply by filing one particular suit against one specific defendant. Moreover, the legislative history and purposes of the 1959 amendments demonstrate that Congress intended the six-month period to be exclusive, and do not hint that an employee can toll the Section 933(b) period in the manner suggested by Petitioner. *See* S. Rep. No. 428, 86th Cong., 1st Sess. 2 (1959); H.R. Rep. No. 229, 86th Cong., 1st Sess. 4 (1959); *Rodriguez*, 451 U.S. at 604-612. *See also Bloomer* v. *Liberty Mutual Ins. Co.*, 445 U.S. 74, 79-80 (1980).

Petitioner's construction of Section 933(b) also does not further the purposes of the LHWCA. The Court recognized in *Rodriguez* that "one of the purposes of the Act is to minimize the need for litigation as a means of providing compensation for injured workmen" (451 U.S. at 616), and that, in the Act, "Congress necessarily balanced the conflicting interests of the vessel owner [*i.e.*, third-party], the stevedore [*i.e.*, the employer], and the longshoreman." *Id.* at 617. Petitioner's construction would permit an employee, by the simple device of suing *someone*, perhaps even someone from whom the employee knows he cannot collect, to reserve his right to sue *everyone*, including those parties who have legitimately relied upon the Section 933(b) limitation in ordering their affairs. By encouraging spurious litigation as well as delay, Petitioner's construction would undermine the policy of repose manifested by the Section 933(b) six-month period and disrupt the balance of interests Congress accomplished through that Section.[5]

---

[5] Petitioner's contention (Pet. 13) that Section 933(b) is unconcerned with the interests of third-parties such as WMATA is also in error. *See, e.g., Rodriguez*, 451 U.S. at 617; *Del Re* v. *Prudential Lines, Inc.*, 669 F.2d 93, 97 (2d Cir. 1982) ("we disagree that the Act was amended [in 1959] solely for the protection and benefit of the longshoreman [here, the employee] and his employer and not for that of the third-party shipowner. Congress devised a statutory scheme intended to balance the interests of all three").

Petitioner's argument that the decision below "split[s] [his] right of action" in a manner forbidden by *Rodriguez* (Pet. 11) is plainly in error. Petitioner's quotation (*id.* at 12) from *Rodriguez* is taken out of context. Nothing in *Rodriguez* suggests that an employee may toll the Section 933(b) time period simply by bringing suit against a different party. *Rodriguez* recognized only that an employee has the right to bring a third-party suit within the six-month Section 933(b) period, and that his right is irretrievably assigned to his employer after that period has passed if he has not already brought suit. 451 U.S. at 603. The court below correctly applied that decision by ruling that Petitioner's suit, filed more than six months after receiving a compensation award (Pet. App. 26a; page 2, *supra*), was untimely. Petitioner's argument (Pet. 14) that the decision below "in effect vests rights in Respondent WMATA which it clearly does not have" is similarly wide of the mark. Section 933(b) is analogous to a six-month statute of limitations within which an injured employee must file a third-party suit, and the only "righ[t]" WMATA thus obtains is the right thereafter to be free from suit by that employee that any statute of limitations provides any potential defendant.

Furthermore, Petitioner has wholly failed to demonstrate that this question is a matter of sufficient national concern to warrant this Court's attention. Certainly, few, if any, other cases will arise in the posture presented here, involving different suits against different third-parties in different courts. Because the unique posture of this case makes this question unlikely to recur, further review is unwarranted.

2. Petitioner's second argument (Pet. 14-19) is that WMATA's wrap-up workers' compensation insurance program,[6] by employing a common insurance carrier for all contractors and subcontractors, discourages employers from bringing assigned third-party suits, and therefore

[6] WMATA's insurance program is described in greater detail in the Petition in No. 88-747, at 5, 20-25.

creates a conflict of interest Congress could not have anticipated when drafting the 1959 amendments. Further review of that question is unnecessary for two reasons.

First, the premise of Petitioner's argument (*see* Pet. 14-16) is that the *Czaplicki* conflict-of-interest exception survived the 1959 LHWCA amendments to former Section 933. For the reasons given by the District of Columbia Circuit (Pet. App. 26a-30a), however, upon which we rely, Congress eliminated that exception in those amendments.[7] The District of Columbia Court of Appeals has also come to the same conclusion. *Edwards* v. *Bechtel Associates Professional Corp.*, 466 A.2d 436, 438-439 (D.C. App.), *cert. denied*, No. 83-560 (Nov. 28, 1983); *Westbrook* v. *Hutchinson Crane Excavating Co.*, No. 82-1151 (D.C. App. June 30, 1983) (*mem.*), slip op. at 2-3, *cert. denied*, No. 83-540 (Nov. 28, 1983).[8] Petitioner's conclusion therefore falls with his premise.

Second, while this Court reserved decision in *Rodriguez* as to whether proof of a conflict of interest that Congress could not have foreseen in 1959 might justify an exception to Section 933(b) (*see* 451 U.S. at 618), this case does not present that issue. The only circumstance here

---

[7] The District of Columbia Circuit had reached the same conclusion in an earlier, unpublished decision in *Phillipi* v. *Bechtel Assoc. Prof. Corp.*, 702 F.2d 1206 (D.C. Cir. 1983) (*mem.*), and on October 3, 1983, this Court denied a Petition seeking review of the same issue presented in question 2 of this Petition. *Phillipi* v. *Bechtel Assoc. Prof. Corp.*, No. 82-2084.

[8] Petitioner's reliance (Pet. 15) upon *Bandy* v. *Bank Line Ltd.*, 518 F. Supp. 1229 (E.D. Va. 1981), is misplaced. The court there ruled that there was no evidence of a *Czaplicki* conflict under Section 933(b). 518 F. Supp. at 1233. The court therefore did not consider the question presented by this Petition. The District Court in *Susino* v. *Hellenic Lines Ltd.*, 551 F. Supp. 1080 (E.D.N.Y. 1982), did rule that *Czaplicki* had survived the 1959 LHWCA amendments (551 F. Supp. at 1083), but the Second Circuit has yet to rule on that question, and there is no reason to presume that the Second Circuit will follow the District Court's ruling in *Susino*. Review of this question should await further consideration by the lower federal courts.

allegedly giving rise to a conflict is the fact that Petitioner's employer, Ball-Healy-Granite, and WMATA have a common insurance carrier (Pet. 16-17). However, that was also the precise situation in *Czaplicki* (351 U.S. at 526-527, 529-532), and Congress was well aware of this situation when it amended Section 933. *See Rodriguez*, 451 U.S. at 610-612 & n.25. Further review of this question is therefore unwarranted, particularly since it likewise has not been shown to be a matter of national concern.

3. Finally, further review is also unnecessary because WMATA is entitled to the immunity from employment-related suits provided by Sections 904 and 905(a). While the Court of Appeals rejected this argument (Pet. App. 16a-23a), contrary to the decision of the District Court (*id.* at 1a-2a), for the reasons given in our Petition in *Washington Metropolitan Area Transit Authority* v. *Johnson*, No. 83-747, *pending*, we believe that this ruling was in error, and have sought summary reversal of the Court of Appeals' decision with respect to this issue. Therefore, should the Court grant our Petition and summarily reverse that ruling, WMATA would be immune from Petitioner's claims, and the Petition in this case should be denied.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

E. BARRETT PRETTYMAN, JR.*
VINCENT H. COHEN
ROBERT B. CAVE
PAUL J. LARKIN, JR.
HOGAN & HARTSON
(a partnership including professional corporations)
815 Connecticut Avenue, N.W.
Washington, D.C. 20006
(202) 331-4685
Counsel for Petitioner

* Counsel of Record